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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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DICKE, BILLIG & CZAJA, P.L.L.C. FIFTH STREET TOWERS 100 SOUTH FIFTH STREET, SUITE 2250 MINNEAPOLIS, MN 55402				DEVORE, PETER T
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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/722,240	DUMAN, ROGER A.
	Examiner Peter deVore	Art Unit 3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 May 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 10,30 and 47 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-9,11-29,31-35,38-46,48 and 49 is/are rejected.
- 7) Claim(s) 36, 37 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Election/Restrictions

Claims 10, 30, and 47 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/10/05.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 recites the limitation "the mounting plate" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 11-19, 44-46, and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Amberg.

Regarding claim 1, the Amberg reference discloses a method transporting containers from a first station (container loading station 13) to a second station (closing station 15) within a container filling system (see col. 1, lines 31-37), each container defining a first end section 45b and a second end section 45c with a longitudinal recess formed by an interior surface of a sidewall (see Fig. 7), the method comprising providing a carrier plate 33 with a mounting piece 46, loading a container onto the mounting piece such that the second end is positioned over the mounting piece such that the mounting piece frictionally engages the inner surface (see Fig. 10 and col. 15, lines 65-70 and note that friction between the inner surface and the mounting piece prevents the container from sliding over the mounting piece or tipping over when the carrier plate is moved), and moving the carrier plate from the first station to the second station, wherein the mounting piece secures the container relative to movement of the carrier plate (see col. 15, last five lines and col. 16, lines 1-8). Regarding claim 2, the loading includes aligning the section end above the mounting piece and directing the container toward the mounting piece such that the second end portion engages the mounting piece (see Fig. 3 and col. 15, lines 58-70 and note that movement of the container into the position proximate reference numeral 46 in Fig. 3 aligns the container above the mounting piece and directs the container toward the mounting piece, the upward movement of the mounting piece completing the engagement). Regarding claims 3 and 4, the loading includes orienting the container such that the first end section 45b is opposite the carrier

plate and the container is in an upright fashion relative to the carrier plate (see Fig. 10). Regarding claim 5, the second end section 45c of the container terminates in a trailing end, and loading the container includes contacting the trailing end against the carrier plate (see Fig. 10). Regarding claim 6, the inner surface of the longitudinal recess defines a perimeter (see Fig. 7), and loading the container includes achieving engagement between the mounting piece and at least three points along the perimeter (see Fig. 3 and col. 15, lines 4-22 and note that the corners of the mounting piece contact the perimeter along respective arcs which can be represented by an infinite number of points around the perimeter. Regarding claim 11, the mounting piece 46 extends beyond a plane defined by the carrier plate 33 (see Fig. 10), and the longitudinal recess extends from an open end to an internal stop surface between the open end and the first end section (see Fig. 7), and loading the container includes contacting the internal stop surface with the mounting piece at a location longitudinally spaced from the open end (see Fig. 10 and col. 14, lines 67-73 and note that the height of the mounting piece being the same as that of the longitudinal recess results in contact between the mounting piece and the internal stop surface during loading). Regarding claim 12, the mounting piece extends from the carrier plate approximately the same distance that is the height of the longitudinal recess (see col. 14, lines 67-73). Regarding claim 13, loading the container includes contacting the inner surface with the mounting piece at at least two longitudinally spaced locations due to the forward edge and chamfered portions of the mounting piece having the same taper as the inner surface (see col. 14, last two lines and col. 15, lines 1-3). Regarding claim 14, an

extension of the inner surface from the open end to the inner stop surface defines a reversed frustoconical shape (the tapered portion discussed in col. 15, lines 1-3), the mounting piece comprising shoulders 46b extending from a base (rounded side of the mounting piece 46 opposite the shoulders, see Fig. 8), the shoulders extending from the base opposite the portion of the carrier plate under the base (see Figs. 8 and 10) and having an outer dimension (height) less than the diameter of the of the base (see Fig. 8), and loading the container includes engaging the inner surface with the base (indirectly via the shoulders, see col. 15, lines 4-12). Regarding claim 15, the mounting piece comprises shoulders 46b extending from a base (rounded side of the mounting piece opposite the shoulders, see Fig. 8) the shoulders extending from the base opposite the portion of the carrier plate under the base (see Figs. 8 and 10), the loading of the container including guiding the second section onto the base via the shoulder (by virtue of the shoulders directly engaging the second section to align the container relative to the mounting piece, see col. 15, lines 4-12). Regarding claim 16, the carrier plate is characterized by the mounting piece preventing tipping of the container relative to the carrier plate (note the lack of tipping of the container during its entire travel on the carrier plate illustrated in Fig. 1). Regarding claim 17, the character of the contact interface between the carrier plate/mounting piece and the inner surface does not change during movement of the carrier plate from the first station to the second station (see Figs. 1, 3, and 10 and col. 15, line 58 to col. 16, line 13). Regarding claim 18, there is no contact between an exterior surface of the sidewall and any component extending from the carrier plate (see Figs. 1, 3, and 10). Regarding claim 19, the carrier

plate 33 includes a multiplicity of mounting pieces 46 (see Fig. 10), the method comprising loading a multiplicity of containers onto the multiplicity of mounting pieces (see Figs. 1, 3, and 10 and col. 15, lines 58-75).

Regarding claim 44, the Amberg reference discloses a transport device in packaging containers 45, each container defining a first end section 45b and a second end section 45c with a longitudinal recess defined by an interior surface of a sidewall (see Fig. 7), the transport device comprising a carrier plate 33 having a top and bottom surface (see Fig. 10), a mounting piece 46 assembled to the carrier plate and extending from the top surface (see Fig. 10), the mounting piece adapted to engage the interior surface of a respective container to secure the container relative to the movement of the carrier plate (see Fig. 10), and the transport device characterized by an absence of posts extending from the carrier plate (see Figures). Regarding claim 45, the mounting piece defines a base (see Fig. 8), a maximum outer transverse dimension of the base (the height) approximates a maximum outer transverse dimension of the recess (the height), see col. 14, lines 67-73. Regarding claim 46, the base defines a continuous perimeter (see Fig. 8). Regarding claim 48, the base includes an exterior surface defining a reversed frustoconical shape (the tapered corners, see col. 14, last two lines and col. 15, first three lines).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-9 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amberg in view of Riviere.

Regarding claim 49, the Amberg reference discloses a transport device as discussed above, but does not disclose that the base forms a circle in transverse cross-section. However, the Riviere reference discloses a similar transport device whose base 20 is partly spherical and thus forms a circle in transverse cross-section such that it is specifically adapted for transport of a container 21 whose second end has a spherical concave inner surface (see Figs. 2-4 and col. 2, lines 57-64). It would have been obvious to modify the base of the Amberg device to be partly spherical and thus forms a circle in transverse cross-section in view of Riviere to adapt the Amberg device to transport a container whose second end has a spherical concave inner surface.

Regarding claim 7, the device as modified above achieves engagement between the base of the mounting piece and the entirety of the perimeter of the longitudinal recess of the container during its use. Regarding claim 8, the device as modified above achieves matching of the cross-sectional shape of the longitudinal recess and the mounting piece during its use. Regarding claim 9, the device as modified above achieves a circular cross-sectional shape of the longitudinal recess and the mounting piece during its use.

Claims 20, 21, 24-27, 32-35, 38-40, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amberg in view of Zopf.

Regarding claim 26, the Amberg reference discloses a container filling system (the disclosed device is part of a container filling system, see col. 1, lines 31-37), each container defining a first end section 45b and a second end section 45c with a longitudinal recess defined by an interior surface of a sidewall (see Fig. 7), the system comprising a first, container loading station 13, a drive system for transporting the containers from station to station having a transport device, the transport device comprising a carrier plate 33 having an upper and lower surface (see Fig. 10) and connected to a drive mechanism 36, a mounting piece 46 assembled to the carrier plate and extending from the upper surface (see Fig. 10), the mounting piece adapted to engage the interior surface of the longitudinal recess a respective container to secure the container relative to the movement of the carrier plate (see Fig. 10), and the transport device characterized by an absence of posts extending from the carrier plate (see Figures), but does not disclose a second, container filling station or that the drive system transports containers from the first, container loading station to the second, container loading station. Instead, containers which have been previously filled by other means are transported directly from the first, container loading station directly to a covering station 15. However, the Zopf reference discloses a container filling system wherein the same conveyor runs unfilled containers to be filled and covered from a container loading station to a container filling station and then to a container loading station (see Zopf col. 4, lines 5-11) for a more compact container filling system that does not require a completely separate container filling means from the covering means. It would have been obvious to modify the Amberg system to have a container

filling station between the container loading station and the covering station for conveying unfilled containers to be filled and covered in view of Zopf for a more compact container filling system that does not require a separate container filling means from the covering means. Regarding claim 27, the mounting piece 46 is a base extending from the top surface of the carrier plate and defining a maximum outer, transverse dimension of the mounting piece and adapted to receive the second end section of the container (see Figs. 8 and 10). Regarding claim 32, although Amberg remains silent as to the height of the base, it would have been obvious to employ a base having a height in the range of 0.1 to 0.4 inches to match a container whose longitudinal recess has a similar height, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Regarding claim 33, the mounting piece comprises shoulders 46b extending from a base (rounded side of the mounting piece 46 opposite the shoulders, see Fig. 8), the shoulders extending from the base opposite the portion of the carrier plate under the base (see Figs. 8 and 10) and having a maximum transverse outer dimension (length) less than the maximum transverse outer diameter (length) of the base (see Fig. 8). Regarding claim 34, the base and shoulders have at least partially circular cross-section due to their curved outer surfaces (see Fig. 8). Regarding claim 35, although Amberg remains silent as to the combined height of the base and shoulder, it would have been obvious to employ a combined height of the base and shoulder in the range of 0.3 to 0.6 inches to match a container whose longitudinal recess has a similar height, since it has been held that

where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Regarding claim 38, the device includes a multiplicity of mounting pieces 66 assembled to the carrier plate 33 (see Fig. 10). Regarding claim 39, if six carrier plate portions 33 are construed as a "carrier plate", the device includes a multiplicity of carrier plates each having a multiplicity of mounting pieces assembled thereto. Regarding claim 40, the container defines an internal region, the first end section open to the internal region and the second end closed to the internal region (see Fig. 7), the transport device adapted to receive the container in an upright position at the first station (see Fig. 1). Regarding claim 43, the modified Amber system comprises a third, covering station 15 to apply a cover to the first end section after processing by the second station (see Fig. 10 of Amberg), the drive system transporting the container from the second station to the third station. Regarding claims 20 and 21, the device as modified above has a first, container loading station and a second, container filling station which at least partially fills the container during its use. Regarding claim 24, the device as modified above moves the carrier plate from the filling station to a closing station, the mounting plate securing the container relative to the carrier plate during movement from the filling station to the closing station during its use. Regarding claim 25, the device as modified above applies a cover to the first end section of the container at the closing station during its use.

Claims 22, 23, 41, and 42 rejected under 35 U.S.C. 103(a) as being unpatentable over Amberg in view of Zopf as applied to claims 21 and 26 above, and further in view of Turtschan.

Regarding claims 41 and 42, the Amberg device as modified dispenses a product into the container at the container filling station, but it is not disclosed that the product is flowable or yogurt. However, the Turtschan reference teaches the use of a similar system which optionally dispenses flowable yogurt (see col. 1, lines 56-61) for convenient mass-production of containers of yogurt for sale. It would have been obvious to modify the modified Amberg device such that the container filling station dispenses flowable yogurt into the containers in view of Turtschan for convenient mass-production of containers of yogurt for sale. Regarding claims 22 and 23, the device as modified above fills containers with flowable yogurt at the filling station.

Claims 28, 29, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amberg in view of Zopf as applied to claim 27 above, and further in view of Riviere.

The Amberg reference discloses a transport device as discussed above and further whose longitudinal recess extends from an open, trailing end to an internal stop surface (see Amberg Fig. 7), but does not disclose that a perimeter shape of the base in transverse cross-section is circular and matches a transverse cross-sectional shape of the longitudinal recess or that the base has a height less than a longitudinal distance between the trailing end and the internal stop surface of the container. However, the Riviere reference discloses a similar transport device whose base 20 is partly spherical

and thus has a circular perimeter shape in transverse cross-section which matches a transverse cross-sectional shape of the longitudinal recess of container 21 such that the base has a height less than a longitudinal distance between the trailing end and the internal stop surface of the container (the height of the base near the outer edge of the spherical portion) such that the base is specifically adapted for transport of a container 21 whose second end has a spherical concave inner surface (see Figs. 2-4 and col. 2, lines 57-64). It would have been obvious to modify the base of the Amberg device to be partly spherical and thus have a circular perimeter shape in transverse cross-section which matches a transverse cross-sectional shape of the longitudinal recess of a container such that the base has a height less than a longitudinal distance between the trailing end and the internal stop surface of the container in view of Riviere to adapt the Amberg device to transport a container whose second end has a spherical concave inner surface.

Allowable Subject Matter

Claims 36 and 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter deVore whose telephone number is 571 272-4884. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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6/21/06